

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against KRISTIAN LEE OYEN,
a Minnesota Attorney,
Registration No. 386383.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's order filed on March 22, 2012.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 22, 2006. Respondent currently practices law in Savage, Minnesota.

INTRODUCTION AND DISCIPLINARY HISTORY

A. On December 3, 2010, respondent was suspended from the practice of law for 60 days for having sexual relations with a client, failing to diligently handle three client matters, failing to communicate with two clients and delaying the return of a client's file upon termination of representation in violation of Rules 1.3, 1.4(a)(3) and (4), 1.7(a)(2), 1.8(j), and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

B. On March 8, 2011, respondent was conditionally reinstated to the practice of law and placed on supervised probation for a period of two years.

C. By order filed on March 22, 2012, respondent was publicly reprimanded and placed on supervised probation for a period of two years from the expiration of his then-pending probation. Respondent's current probation expires on March 8, 2015. A copy of the Court's order is attached as Exhibit 1.

Respondent's March 2012 discipline was based upon lack of competence, failure to follow court rules, failure to return client property upon termination of representation, failure to refund an unearned retainer, lack of diligence, and failure to communicate with clients in violation of Rules 1.1, 1.3, 1.4(a)(3) and (4), 1.5, 1.15(c)(4), 1.16(d), and 3.4(c), MRPC.

The conditions of respondent's probation were as follows:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall provide the Director with a current mailing address and shall immediately notify the Director of any change of address. Respondent shall promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of the allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall authorize the release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall be supervised by a licensed Minnesota attorney appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide the Director with the names of four attorneys who have agreed to be nominated as respondent's supervisor. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, respondent shall on the first day of each month provide the Director with an inventory of active client files, as described in paragraph c below. Respondent shall make active client files available to the Director upon request.

c. Respondent shall cooperate fully with the supervisor's efforts to monitor compliance with probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. By the first day of each month during probation, respondent shall provide the supervisor with an inventory of all active client files. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as the Director may reasonably request.

d. Respondent shall initiate and maintain office procedures that ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts, and other persons with an interest in matters that respondent is handling, and that will ensure that respondent regularly reviews each and every file and completes legal matters on a timely basis.

e. Respondent shall abide by the Minnesota Rules of Professional Conduct.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Pattern of Failing to Appear for Hearings, Neglect, and Incompetence

J.B. and A.B. Matter

1. On June 11, 2012, J.B. and A.B., husband and wife, retained respondent for representation in an administrative forfeiture proceeding. Respondent concurrently represented J.B. in an implied consent matter.

2. On August 26, 2012, J.B. emailed respondent and informed him that he had entered a plea of not guilty and inquired whether they were still scheduled to appear in court on Tuesday. Respondent failed to respond to J.B.

3. On October 15, 2012, J.B. emailed respondent and informed him that he had accepted a plea bargain and expected to be sentenced on December 14. J.B. further stated, "Let me know what we need to get the ball rolling for our van."

4. On October 22, 2012, respondent purportedly sent J.B. a letter in response to J.B.'s October 15 email in which respondent discussed the ramifications of J.B.'s plea. Respondent asked J.B. to contact him immediately and advise respondent as to how J.B. wished to proceed prior to his next hearing on November 5, 2012, concerning the implied consent matter. Respondent made no further attempts to contact J.B.

5. A hearing was scheduled for November 5, 2012, concerning the implied consent matter. Neither respondent nor J.B. appeared for the hearing on November 5, 2012. Jeffrey Bilcik, the assistant attorney general handling the matter, appeared in Kanabec County district court on behalf of the Commissioner of Public Safety and moved to dismiss the matter. The court's notes from the November 5, 2012, hearing state, "[Jeffrey Bilcik] — agree continuance last time — no one here move to dismiss — sustain DL." The court issued its order on November 5, 2012, sustaining the revocation of J.B.'s driving privileges.

6. On or about December 20, 2012, the court issued an order setting a hearing for February 26, 2013, concerning the forfeiture matter.

7. On February 8, 2013, prosecutor Barbara McFadden contacted respondent by telephone regarding the February 26, 2013, forfeiture hearing. McFadden inquired whether respondent and J.B. still intended to challenge the forfeiture given J.B.'s conviction in the underlying criminal matter. Respondent indicated he intended to dismiss the forfeiture challenge, but that he needed J.B. and A.B.'s consent to do so.

8. On February 11, 2013, McFadden sent respondent a stipulation and order for J.B. and A.B.'s review and approval. Respondent did not respond to McFadden regarding the stipulation.

9. On February 19, 2013, McFadden telephoned respondent and left him a voicemail message requesting that he contact her regarding the forfeiture matter. Respondent did not return McFadden's telephone call until February 26, 2013, approximately 45 minutes prior to the scheduled forfeiture hearing.

10. Respondent indicated to McFadden that he had been unable to reach his clients regarding the dismissal. Respondent further indicated he did not intend to appear for the hearing. Respondent stated that since he had not heard from his clients, the matter would likely be dismissed by default.

11. Respondent did not, at any time, seek a continuance on behalf of J.B. and A.B. and did not serve and file a notice of withdrawal. Respondent remained counsel of record for J.B. and A.B.

12. Respondent failed to appear for the February 26, 2013, forfeiture hearing.

13. McFadden appeared for the hearing as scheduled. McFadden informed the court that she had spoken to respondent and that he told her he would not be attending the hearing and that he had been unable to reach his clients to discuss their case.

14. A.B., who was also present for the hearing, stood up after McFadden concluded her comments and stated that she was respondent's client and that she had been unsuccessfully trying to reach him for months. J.B. was incarcerated during this time. After speaking with McFadden, A.B. agreed to dismiss the claim, despite McFadden's amenability to continue the matter to allow A.B.'s counsel to appear. The court subsequently entered an order dismissing J.B. and A.B.'s claim with prejudice.

15. Judgment in the matter was stayed until March 22, 2013, to allow J.B. and A.B. time for an appeal or removal to district court. Respondent took no further action with regard to this matter.

O.T. Matter

16. On or about November 5, 2012, respondent was retained to represent O.T. in a misdemeanor criminal matter. Respondent filed his certificate of representation on November 6, 2012.

17. A settlement conference was scheduled for December 10, 2012, notice of which was sent to respondent on November 6, 2012. Neither respondent nor O.T. appeared for the December 10, 2012, settlement conference. Respondent did not seek a continuance, or otherwise communicate to the court or the prosecutor that he would not appear as scheduled. The prosecutor appeared as scheduled.

18. On December 10, 2012, the court reset the matter to December 31, 2012, notice of which was sent to respondent. Both respondent and O.T. appeared on December 31, 2012. Due to the parties' inability to reach a settlement, a pretrial was scheduled for March 21, 2013, followed by a jury trial the week of April 8, 2013. Notice of the pretrial and jury trial dates was sent to respondent on January 4, 2013.

19. On March 20, 2013, one day before the pretrial, respondent faxed to the court a request for a continuance. The court continued the pretrial to March 29, 2013. The jury trial was set to begin on April 11, 2013.

20. On March 29, 2013, respondent and O.T. appeared as scheduled. O.T. attempted to plead guilty, but the court rejected his plea due to an inadequate factual basis.

21. The court granted respondent's request to submit a written guilty plea by April 5, 2013. The jury trial remained scheduled for April 11, 2013.

22. Respondent and the prosecutor reached a plea agreement on or about April 4, 2013. Respondent did not file, as ordered, by April 5, 2013, or at any time thereafter, the written plea agreement. Respondent did not inform the court that an agreement would not be filed as ordered.

23. By letter dated April 9, 2013, respondent informed the court that an agreement had been reached and a plea petition would be submitted to the court by April 18, 2013. Respondent requested that the April 11, 2013, jury trial be reset to a later date for a sentencing hearing.

24. The court granted respondent's request, canceled the jury trial scheduled for April 11, 2013, and scheduled O.T.'s sentencing hearing for June 7, 2013. The court sent notice of the June 7, 2013, sentencing hearing to respondent.

25. Respondent failed to submit O.T.'s plea petition to the court by April 18, 2013, and failed to communicate with the court that the plea petition would not be filed as promised.

26. Neither respondent nor O.T. appeared in court on June 7, 2013, for the sentencing hearing. Respondent failed to notify the court or the prosecutor that he and his client would not be appearing for the hearing. The court issued a bench warrant for O.T.'s arrest as a result of his failure to appear.

27. On June 25, 2013, respondent met with the prosecutor and provided her with a plea petition executed by O.T. on April 18, 2013. The prosecutor approved and signed the petition and sent it to the court for approval.

28. On July 1, 2013, the court again rejected O.T.'s plea as the plea petition lacked a sufficient and factual basis and contained open-ended sentencing terms.

29. On July 19, 2013, O.T. was arrested for a misdemeanor traffic violation and on August 5, 2013, O.T. was arrested on the bench warrant issued June 7, 2013. O.T. did not retain respondent to represent him in the traffic violation. O.T. was

released from custody on August 5, 2013, and ordered to appear before the court on August 12, 2013, for both the traffic violation and to address his failure to appear on June 7, 2013. On August 6, 2013, the court sent notice to respondent of the August 12, 2013, hearing.

30. On August 9, 2013, respondent requested a continuance due to a scheduling conflict.

31. The prosecutor objected to a continuance. The prosecutor stated in a letter to the court dated August 9, 2013, that not only had she experienced difficulty getting O.T. to appear in court, but that the City of Alexandria was scheduled to appear that same day with regard to the July 19, 2013, traffic violation matter against O.T. The prosecutor further stated that unless O.T. signed a promise to appear, prior to the hearing scheduled for August 12, 2013, she would oppose the continuance. O.T. failed to sign a promise to appear prior to the August 12, 2013, hearing.

32. The court did not grant respondent's request for a continuance. Neither respondent nor O.T. appeared for the August 12, 2013, hearing. The court issued another bench warrant for O.T.'s arrest and ordered that O.T.'s \$200 bail be forfeited.

33. On September 26, 2013, the court filed a notice of hearing scheduled for November 14, 2013. The court sent a copy of the notice to respondent.

34. Respondent failed to appear for O.T.'s November 14, 2013, hearing. O.T. appeared late for the hearing. In response to the court's inquiry, O.T. stated that he had no contact with respondent concerning the hearing. O.T. waived his right to have respondent continue to represent him and proceeded *pro se*.

35. After the hearing, O.T. and the prosecutor reached a plea agreement. The court allowed the parties to re-enter the courtroom at which time O.T. entered a guilty plea and was sentenced.

36. Respondent failed to provide the court with an explanation for his failure to appear for O.T.'s November 14, 2013, hearing.

L.B. Matter

37. On March 27, 2013, respondent filed a certificate of representation on behalf of L.B. in a conciliation appeal matter. The court held a scheduling conference on April 16, 2013. The court ordered discovery to be completed by June 14, 2013; witness and exhibit lists were due by July 29, 2013; and a jury trial was scheduled for August 26, 2013. The court scheduled a pretrial hearing for 9:00 a.m. on July 29, 2013. A copy of the scheduling order was sent to respondent on or about April 16, 2013.

38. Respondent and L.B. failed to appear for the July 29, 2013, pretrial hearing and respondent failed to file L.B.'s witness and exhibit lists.

39. Opposing counsel traveled 184 miles (roundtrip) and appeared for the pretrial hearing as scheduled.

40. Respondent contacted the court later that day and asked the court to reset the pretrial hearing. On July 31, 2013, opposing counsel wrote a lengthy letter to the court outlining the history of the lawsuit against L.B. Opposing counsel opposed respondent's request to reset the pretrial hearing and filed an affidavit in support of a motion for default judgment.

41. On August 20, 2013, the court granted opposing counsel's motion, entered a default judgment against L.B. in the amount of \$17,520.92 and assessed attorney's fees and costs of \$3,655.96 jointly and severally against respondent and L.B.

A.B. Matter

42. Respondent represented A.B. in a child custody matter. Respondent drafted and served upon the child's mother a summons and petition to establish custody, but failed to file those pleadings with the court. The child's mother filed an

answer and counter-petition to establish custody and parenting time and paid \$370 for filing fees.

43. Respondent failed to appear for a July 1, 2013, initial case management conference. A.B. appeared without counsel. On August 22, 2013, the court filed an amended scheduling order. The court ordered the parties to complete the Alternative Dispute Resolution process and custody evaluation. The court further ordered the parties to provide the court with the name of a neutral by November 15, 2013. The court ordered that mediation, discovery, and the exchange of exhibit and witness lists be completed by December 9, 2013. The court scheduled a pretrial conference for 1:30 p.m. on December 9, 2013. A copy of the court's scheduling order was sent to respondent on or about August 22, 2013.

44. A.B. failed to complete the custody evaluation and opposing counsel was unable to reach respondent to arrange for mediation. A.B. did not attend parent education classes. Respondent did not serve discovery requests upon opposing counsel, and did not file witness and exhibit lists with the court. Respondent never filed A.B.'s summons and complaint with the court.

45. On the morning of December 9, 2013, respondent called the court to request a continuance of the pretrial hearing scheduled for that afternoon. The court denied respondent's request due to respondent's failure to meet the mandates of the court's August 22, 2013, order, as noted above.

46. Respondent failed to appear in court that afternoon. A.B. appeared and informed the court that he had been unable to contact respondent.

47. Upon opposing counsel's motion, the court dismissed A.B.'s child custody matter.

M. H. Matter

48. Respondent represented M.H. in a child custody matter. During an evidentiary hearing on November 13, 2013, M.H. and the child's paternal grandmother reached an agreement. Respondent agreed to prepare and submit to the court a proposed order memorializing the terms of the stipulation.

49. A review hearing was scheduled for January 13, 2014, notice of which was sent to respondent on or about November 14, 2013.

50. By December 11, 2013, the court had not received the proposed order from respondent; therefore a judicial law clerk called respondent to request that he submit the proposed order as soon as possible. The law clerk was unable to reach respondent and did not receive any assurances respondent would soon file the order.

51. At the January 13, 2014, review hearing, respondent filed an unsigned stipulation with the court.

52. The court scheduled a hearing for March 3, 2014, for the parties to submit an executed copy of the stipulation. The hearing could be cancelled if a stipulation was filed.

53. Obtaining an executed copy of the stipulation required the court to hold its March 3, 2014, hearing, at which time all parties signed the stipulation.

S.G. Matter

54. Respondent represented S.G. in an order for protection matter. The court granted S.G.'s petition on May 17, 2013.

55. On July 19, 2013, S.G.'s husband filed a petition for dissolution of marriage. S.G. did not file an answer. The matter proceeded by default and on September 10, 2013, the court filed its findings of fact, conclusions of law, order for judgment and judgment and decree.

56. S.G. retained respondent to reopen the dissolution matter. On September 11, 2013, respondent telephoned the court and requested a hearing on S.G.'s behalf. A hearing on respondent's oral motion to vacate was scheduled for October 14, 2013. Prior to October 14, 2013, respondent cancelled the motion to vacate hearing and on November 7, 2013, he rescheduled the hearing for December 9, 2013. During this time, respondent failed to file a certificate of representation and failed to file a written motion to vacate judgment.

57. Respondent and S.G. failed to appear for the December 9, 2013, hearing.

58. The matter was scheduled for hearing on March 17, 2014. The March 17, 2014, motion hearing was subsequently cancelled as written documentation for S.G.'s motion had not been filed with the court.

59. On or before March 27, 2014, opposing counsel contacted the court by telephone to schedule a hearing on a motion for contempt regarding S.G.'s violation of the court's findings of fact, conclusions of law, order for judgment and judgment and decree dated September 10, 2013.

60. On March 31, 2014, petitioner's counsel filed his certificate of representation, indicating that S.G. appeared *pro se*. Respondent failed to file a certificate of representation.

61. Also on March 31, 2014, the court filed an order to show cause for S.G. to appear in court on May 5, 2014.

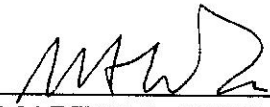
62. On May 2, 2014, three days before the May 5, 2014, show cause hearing, respondent filed a certificate of representation, an application for S.G. to proceed *in forma pauperis*, an affidavit of S. G. and a request for a continuance.

63. On May 5, 2014, the court rescheduled S.G.'s matter for June 16, 2014. At the June 16, 2014, hearing, the court took the matter under advisement. By order dated June 27, 2014, the court scheduled an evidentiary hearing for August 11, 2014.

64. Respondent's conduct violated Rules 1.1, 1.3, 3.2, 3.4(c), and 8.4(d), MRPC, and the Court's probation order filed March 22, 2012.


WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 25, 2014.



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